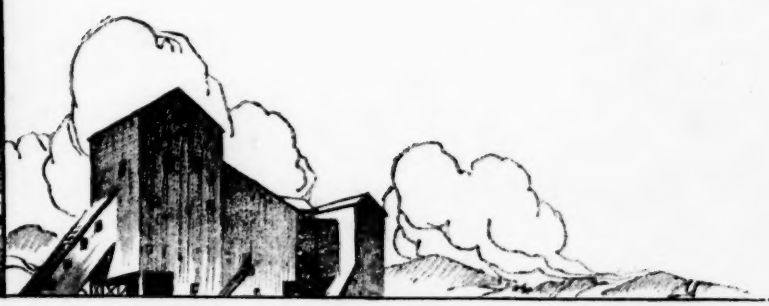
The CRUSHED STONE JOURNAL



OFFICIAL PUBLICATION ◆ NATIONAL CRUSHED STONE ASSOCIATION

The Crushed Stone Journal

Official Publication of the NATIONAL CRUSHED STONE ASSOCIATION

J. R. BOYD, Editor

NATIONAL CRUSHED STONE ASSOCIATION

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Munsey Building
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In This Issue

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THE CRUSHED STONE JOURNAL

WASHINGTON, D. C.

Volume 10, Number 1 October, 1935

PUBLICATION OF THE CRUSHED STONE JOURNAL IS RESUMED

Publication of "The Crushed Stone Journal", you will recall, was suspended about two years ago because of adverse economic conditions, coupled with the increased press of work falling upon Association personnel in connection with activities growing out of the establishment and administration of the Code. The decision to resume its publication reflects a strongly expressed desire of members of the Association to have some form of official publication regularly issued.

The "Journal" affords an effective and convenient medium for keeping the membership informed of those events and developments which concern their operations both directly and indirectly. In its columns the various activities of the Association will be reviewed and progress reports made at appropriate intervals; analyses of national legislation affecting the industry will be given; activities of the various departments of the Federal Government in which our industry is involved will be described; and information generally interesting to the membership will be included. A most important feature of the "Journal" will be timely reports concerning the work of the Bureau of Engineering and the research laboratory which added so much of interest and value to the publication when it was formerly published.

It will be our constant desire in resuming publication of the "Journal" to make it increasingly useful and informative. Criticisms and suggestions concerning it are earnestly requested.

INSTITUTE ANNOUNCES SELECTION OF ST. LOUIS FOR 1936 CONVENTIONS

Of especial interest to crushed stone producers is the recent announcement of the Mineral Aggregates Institute that St. Louis has been selected for the 1936 convention of the three member Associations. Following is the full text of the Institute's release on this subject.

"The Mineral Aggregates Institute is authorized to announce that concurrent annual conventions of the National Crushed Stone Association, the National Sand and Gravel Association, and the National Slag Association will be held during the week of January 27, 1936, at the Hotel Jefferson, St. Louis, Mo. The instrumentalities afforded by the Institute were utilized by its member Associations in the consideration of convention plans, and the decision as to the desirability of holding concurrent conventions was based upon the recognition that this would facilitate the handling of those problems of the industries in which there is a mutuality of interest.

"One day will be devoted to a joint program arranged by the Institute, and further announcements will give the details of the events scheduled for that day. The member Associations will announce the program which they will arrange for the separate sessions of their individual organizations."

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TENTATIVE AGENDA FOR CONVENTION OF St. LOUIS MAY 1939 ANNOUNCED

Of especial interest to crushed stone producers is the recent announcement of the Natural Aggregates Institute that St. Louis has been selected for the 1939 convention of the three major associations. Following is the full text of the Institute's release on this subject.

"The mineral Aggregates Institute is authorized to announce that convention meetings of the National Crushed Stone Association, the National Sand and Gravel Association, and the National Slag Association will be held during the week of January 23, 1939, at the Hotel Jefferson, St. Louis, Mo. The interconnectedness affected by the Institute were utilized by its member Associations in the consideration of convention plans, and the decision as to the desirability of holding concurrent conventions was based upon the recognition that this would facilitate the handling of those problems of the industries in which there is a community of interest.

"One day will be devoted to a joint session arranged by the Institute, but further announcements will give the details of the events scheduled for that day. The combined associations will announce the program which they will arrange for the separate sessions of their individual organizations."

REVIEW OF LEGISLATION ADOPTED AT LAST SESSION OF CONGRESS SUBMITTED BY THE MINERAL AGGREGATES INSTITUTE

The first session of the 74th Congress closed in characteristic fashion, although it was generally supposed that the so-called Lame Duck Amendment to the Constitution had removed the reason and the necessity for filibustering. An important deficiency appropriation bill came to an untimely end, and the country witnessed the spectacle of one member of the Senate succeeding in blocking the enactment of legislation to which he in all probability was the only one in opposition. It is a traditional custom in the Senate not to restrict the privilege of free and unlimited debate. In the main that right has not been abused, but it is not unlikely that a move will be launched when Congress reconvenes next January to restrict Senatorial oratory. As the parliamentary rules of the Senate now read, debate may not be limited without unanimous consent, and a Senator may take the floor and talk for as long as he pleases, or as long as he is able, about anything related or unrelated to the particular bill before the Senate for consideration. Due to its tremendous size, the House of Representatives has the means of sharply curtailing debate, and it was often exercised in the last session.

While the country as a whole heaved a tremendous sigh of relief when members of Congress realized a frustrated desire to return to their homes, there is now a sobering realization that during the 234 days it was in session, the Congress enacted legislation which goes further toward realigning our social and economic structure than any previous Congress in the Nation's history. A total of 13,800 bills and resolutions were introduced; 610 laws were enacted; and a new record for appropriations was established when Congress voted $10,000,000,000 out of the Federal Treasury. That included the largest single appropriation bill that has ever been introduced - the $4,800,000,000 Emergency Relief Appropriation Act of 1935.

We submit below a reference to a number of bills which directly concern our industries. Most of them have been explained in detail in previous reports, and as to these we shall not attempt to describe all of their relevant provisions. Our principal purpose in mentioning them is to refresh the minds of our industries as to those respective enactments which will exercise an influence in our daily operations. We must be alert to the fact that our industrial system is undergoing revolutionary changes, and the country is being committed to a policy which departs materially from older customs. The significance of the bills must be understood and we should be prepared, at the proper time and place, to contribute our viewpoint as to the practical operation of the various bills and the need, if any, for their amendment at the next session.

Walsh Bill

Although it passed the Senate by a voice vote, indicating that it encountered little opposition, the Walsh Bill became deadlocked in the House Judiciary Committee, notwithstanding the fact that its author appeared before that Committee and urged its favorable report to the House of Representatives before Congress adjourned. The majority of the Committee, however, was adamant against enactment of the legislation, Chairman Sumners insisting that its effect was too drastic and that hasty consideration would be unwise. As previously stated, the Walsh Bill would have restored the labor provisions of

all codes in the sale of materials and services, directly or indirectly, to the Federal Government. Members of all industries, desiring to establish their eligibility to bid, would have been required to show that within 30 days after the bill had been signed by the President, they had restored in their operations all code provisions which had the result of benefiting labor.

It is well to emphasize that the bill failed. It is not necessary, under these circumstances, for members of our industries to abide by code labor provisions in the sale of materials on public works projects financed in whole or in part by the Federal Government. It is reasonable to anticipate that the Walsh Bill will be revived at the next session of Congress, and present indications are that it will not only repeat its success in the Senate, but also, if it reaches the floor of the House, that it will pass by a comfortable majority.

Protection of Material Men

As an appendix (No. 1) to this report, we furnish the text of H.R. 8519 more familiarly known as the Miller Dual Bonding Bill, which requires that contracts for the construction, alteration, and repair of any public building or any public work of the United States, where the contract exceeds $2000 in amount, shall be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor. The bill commanded apparently unanimous support in both branches of the Congress and in neither case was it subjected to a roll call vote.

In its favorable report on the bill, the House Judiciary Committee stated that it received many complaints with reference to the operation of the Heard Act, particularly from producers of materials who had experienced in many cases what seemed to the committee to be undue delay in the collection of funds due them by suits on bonds under the procedure prescribed by the Heard Act. The Treasury Department advised the Committee that it supported the Miller Bill. Under the bill, the contractor on all contracts of more than $2000 must furnish two bonds: (1) a performance bond satisfactory to the officer of the Federal Government awarding the contract in such amount as he shall deem adequate for the protection of the United States; (2) a payment bond for the protection of all persons furnishing labor or material in the prosecution of the work provided for in such contracts.

The right to sue on the payment bond and prosecute his action to judgment and execution accrues to any person protected by the bond 90 days after the last of his labor was performed or material supplied if he has not been paid within that time. The suit must be brought in the district court of the district where the contract was to be performed and may not be commenced after the expiration of one year from the date of final settlement on the contract. One protected by the bond must be vigilant in the prosecution of his rights thereunder or take the chance of finding the bond depleted by the executions of those more prompt than he, or perhaps find the door entirely closed against his suit by limitation.

President Asks Study of New National Recovery Act

It was apparent from statements made at his press conferences that the President had not abandoned his conviction that the National Industrial Reco-

very Act was beneficial legislation, to industry, to labor, and to the public. Perhaps his greatest disappointment was the action of the Supreme Court in holding the bill to be unconstitutional because of its violation of those provisions of our basic law which hold that only Congress shall exercise legislative functions and that, in carrying out the law-making power, they shall have jurisdiction only over commerce "among the states." (It is interesting at this point to recall that nowhere in the Constitution do the words "interstate commerce" and "intrastate commerce" appear.) It was predicted on all sides that at the next session of Congress the President would actively sponsor new legislation designed to salvage as much as possible of the Old Recovery Act, but it was not thought that he would give any formal expression to his intentions in this regard until Congress reassembled.

It came as a great surprise, therefore, when the President addressed similar letters to Senator Harrison and Congressman Doughton, chairmen, respectively, of the Senate Finance Committee and the House Ways and Means Committee, in which he urged that these two important committees should occupy themselves, during the adjournment of Congress, in reviewing data collected by the National Recovery Administration concerning the effect of code invalidation; that hearings should be conducted by the two committees, and that the results thereof should be used as a basis for new legislation, to be introduced when Congress reconvenes, "for preserving permanently to the Nation such social and economic advantages as were gained through previous emergency enactments." With his letter, the President submitted certain information already placed at his disposal by the National Recovery Administration, alleging to show that industry, in many parts of the country, had resorted to wage reductions, increasing of hours of employment, and price cutting since the decision of the Supreme Court in the Schechter Case.

Below we present the full text of this significant letter. Its careful reading is earnestly suggested, because it is reflective of a persevering Administration policy.

"The White House
"Washington, August 24, 1935.

"My Dear Mr. Chairman: Reports upon industrial conditions, covering the short period in which commerce and industry have been functioning without the advantage of the codes of fair competition, have been received by me from the National Recovery Administration. Notwithstanding successful and praiseworthy efforts being made by many employers to maintain standards of employment these indicate a tendency toward serious impairment of established standards by a minority. To place these facts before your committee, I am transmitting herewith certain information substantiating this conclusion. As additional evidence is gathered, I shall continue to furnish it to your committee to lay as broad a factual base as possible for your consideration of the problems involved. The National Recovery Administration is also making a general survey of the results so far obtained under the National Industrial Recovery Act.

"It does not seem possible to complete this work in time for its use at the present session of Congress. In the short time remaining it seems impractical to ask the Congress to give consideration to an industrial statute of broad import. If your committee staff could be delegated to analyze, during the coming months, the mater-

ial collected, I believe adequate data would be made available for a thorough understanding of the complex situation confronting industry and labor. With this done your committee could meet, in the fall, for hearings and the formulation of proposed legislation for preserving permanently to the Nation such social and economic advantages as were gained through previous emergency enactments. This would enable you to offer at the opening of the coming session a well-considered program for congressional action.

"Pending determination by the Congress of whether further industrial legislation will be enacted, it is hoped that industrial groups will, in increasing numbers, avail themselves of the provisions of the joint resolution extending National Industrial Recovery Administration which permit agreements (1) putting into effect the requirements of section 7(a), minimum wages, maximum hours, and prohibition of child labor; and (2) prohibiting unfair competitive practices which offend against existing law. Such agreements, when approved by the President, as to matters covered by the joint resolution, are exempted expressly from the penalties of the anti-trust laws, including criminal prosecutions, injunctions, and treble damages. By such action industry can undoubtedly do much to preserve the very substantial gains made while the codes were in effect. Applications for approval of such agreements should be filed with the Federal Trade Commission.

"Industry may continue to take advantage of the familiar trade practice conference procedure of the Federal Trade Commission.

"It will be my purpose during the adjournment of Congress to call into conference representatives of management, labor, and consumers in the hope that discussion will create among them a general agreement as to the best means of accelerating industrial recovery and the elimination of unemployment. I am hopeful that such an effort will be successful, especially in view of the definite manifestation of interest by all in the solution of these problems.

"I am sending a similar letter to the Honorable Robert L. Doughton, Chairman of the Committee on Ways and Means, House of Representatives. May I request that consideration be given by your committee toward adopting a plan conformable to these suggestions, and, if possible, correlating the activities of the respective Senate and House Committees.

"Very sincerely yours,

Franklin D. Roosevelt."

Special Survey of Our Industries

The National Recovery Administration has announced that it has selected a small group of industries for special study as to the results of code invalidation. This will go not only to labor provisions but to all other phases of industry operation, including the price structure. Among this selected group are the crushed stone, sand and gravel, and slag industries. The Institute has conferred with the Administration on the scope and purpose of the study in our industries, and later we shall be able to furnish more complete details

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than are available at the present time. It is known, however, that the investigational work will be done through regional headquarters of the National Recovery Administration, and members of the industries will probably receive personal visits or questionnaires from attaches of these agencies.

No legal obligation rests upon producers to interview these men or to answer their questionnaires, but to the extent that the questions asked are not impertinent and have the obvious purpose of development of orderly industry information as a basis for constructive legislation in the future, the survey should have our support and cooperation. The Institute is without exact information at this writing concerning the maintenance of code standards in the industries, although scattered reports reveal that the wage structure has been generally maintained and that the price level has not suffered severely. The Institute will keep in close touch with the Administration's survey and will offer its services in the analysis of data.

The National Recovery Administration is now engaged in the task of writing the history of all of the codes which it approved. The Institute is assisting the Administration in reviewing the results of Code 109. This is an important function as will be recognized. The final report of the Administration will be made available to the Congress when it reassembles, and the nature of the recommendations therein contained will undoubtedly have a compelling influence upon future legislation.

Voluntary Codes

Industry is showing an understandable timidity in the submission of voluntary codes to the Federal Trade Commission. In his letters to Senator Harrison and Congressman Doughton, the President, for the first time, expressed hope that industry would take advantage of the provisions of the National Recovery Act in its present form. So far industry has not been persuaded that the Act is anything more than a makeshift, ambiguous piece of legislation. It had too many unfortunate experiences with the Federal Trade Commission in the past to look with a friendly eye upon its capacity or desire to be of service in the restoration of industry stability.

Since the appeal of the President may have some immediate results, it may be helpful to review the extent to which voluntary codes may go under existing law. They may contain wage and hour standards, provide for elimination of child labor and for collective bargaining. When so submitted and approved by the President, he may suspend the antitrust laws as to that industry if compliance with the labor provisions would bring them into conflict with the antitrust laws. This is the only relaxation of the antitrust laws which is discretionary with the President. Voluntary codes may also provide for the elimination of trade practices now already illegal by virtue of statutory or judicial law, such as misbranding, commercial bribery, and the like.

When voluntary codes go beyond these two factors, we enter the realm of pure speculation. The Federal Trade Commission has not seen fit to commit itself to any policy in this regard, simply contenting itself with the statement that if industry desires to present a voluntary code which contains more than labor standards and illegal trade practices, the Commission will take whatever action it deems to be appropriate. Under these circumstances, voluntary codes may originally propose the use of the open price policy, for the establishment

of uniform credit terms and uniform marketing policies; for the use of uniform accounting systems, observance of safety standards, and related programs for the promotion of industry stability. If the Commission should find that approval of such provisions for incorporation in voluntary codes would not offend the antitrust laws or tend toward establishment of monopoly, no objection will be made to them.

A fundamental consideration as to all voluntary codes is that they must be policed by industry itself. The Federal Government will not even assist in requiring compliance with labor provisions of voluntary codes, and there can be no punishment inflicted upon a violator unless through the means of a liquidated damages agreement. To some extent, it may be contended with logic that voluntary codes are more appealing than the codes promulgated under Title I of the original Recovery Act, because self-government is secured in all of its expressions. Offsetting this is the circumstance that until the Recovery Act was held to be unenforceable because of its unconstitutionality, all members of industry were required to comply with applicable codes. Therefore, a company will naturally inquire before it signs a voluntary code for the industry in which it is engaged, as to whether it will thereby expose itself to uncontrolled and unregulated competition. Unless all or a great majority of a given industry is signatory to a voluntary code, it would seem to stand little if any chance of success.

Aggregates associations are being formed or have been launched in several states. Notable progress has been made and voluntary codes, or plans of voluntary cooperation, have been worked out and submitted to the interested producers. Later on the Institute will submit a complete report as to what is being done in our industries throughout the country to maintain those provisions of the code which were found to be helpful in the elimination of disorderly competition.

No voluntary code has yet been approved by the Federal Trade Commission, but considerable publicity has been given to the agreement under which the anthracite industry is now operating. The Anthracite Institute announces that the program requires that every signatory producer shall file with the Institute the prices, terms of sale, and sales policies which have been applied by the producer in connection with all sales. In order to avoid the burden of separately filing the details of each transaction, producers at the outset file with the Institute their latest prices, terms of sale, and sales policies. These remain constant and the factors control all transactions until producers file with the Institute full information as to modified prices, terms of sale, or sales policies applied in connection with any sale of anthracite. When any changes are so filed, they become the sole prices, terms, and sales policies of the producer applicable to all of his customers similarly situated, until such time as he informs the Institute of sales or offers to sell at different prices or different terms. Such an arrangement does not call for the utilization of a waiting period, and anthracite producers may depart from filed prices, terms and conditions of sale without prior notice to the Institute; their only responsibility is that they shall inform the Institute whenever they sell or offer to sell at other than the terms on file with the Institute. The plan seems to have the enthusiastic support of the anthracite industry, and it is held to be free from the injunctions of the antitrust laws and to be entirely in accord with good public policy.

Social Security Bill

No enactment of the past Congress was of such transcendental importance

of uniform credit terms and uniform marketing policies for the use of existing advertising systems, conferences of newly elected, and related programs for the promotion of industry stability. If the Commission should find that approval of such provisions for incorporation in voluntary codes would forbid the antitrust laws or bond boycott accomplishment of monopoly, no objection will be made to them.

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Numerous associations are being formed or have been launched in several [illegible]. Notable proposals [illegible] and voluntary codes, or plans of voluntary cooperation, have been formed and submitted to the Industrial Conference. Later on the Institute will submit a tentative report as to what is being done in our Industries. Experience about the security trends along of the code will very [illegible] to be helpful in the attainment of disinterested cooperation.

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Trade Security Bill

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as the Social Security Bill. While it had active Administration sponsorship, the legislation did not result in the forming of party lines, and there was little if any opposition to the bill in either the House or the Senate. This circumstance may be accepted as indicating that the principle of the Social Security Bill is permanent legislation. For many years liberal groups in the United States have advocated the granting of Federal subsidies and the levying of excise taxes for old-age pensions, unemployment insurance, aid to helpless children, and other distressed groups. When Congress did act on the subject, it went far beyond similar legislation adopted by other countries, and the terms of the present bill call for levies which are staggering in their proportions. Not many years ago the total cost of operation of the Federal Government was less than $1,000,000,000 annually, and yet the Social Security Bill, when 1949 is reached, will cost $4,000,000,000 each year. This is said on the assumption that the grants in the legislation will not be increased, but if past experience is any criterion, we shall witness the spectacle of campaigns for public office upon the promise that the annuities and pensions will be advanced substantially over existing authorized levels.

In our last report we gave an abstract of the Social Security Bill, pointing out that payroll assessments would progressively increase to 6.3 per cent annually, in addition to the sums which employers must collect from employees for the old-age annuity fund. In a later report we shall furnish additional information designed to assist producers in preparing themselves for imposition of the taxes. The point is emphasized at this time that plans for operation in 1936 should not be made without adequate consideration of the effect of the Social Security Bill.

Tax Bill

Sharply contrasting with the general acceptance of the Social Security Bill in political quarters, was the heavy artillery aimed at the Tax Bill, forced upon a reluctant Congress by the Administration. It received no championship beyond a statement that it was in conformity with the recommendations of the President, and even if its estimated annual yields mature in actual collections, the increase in Federal income will amount to but $250,000,000. This is still a great deal of money, but in comparison with budgetary deficits, it shrinks into insignificance.

One is forced to the conclusion that the bill has a social rather than a revenue-producing purpose. Personal incomes of less than $50,000 will not receive additional taxes by virtue of the bill, and yet it is precisely from this group that the Federal Government receives the bulk of its revenue from income taxes.

The graduated tax on corporations, admittedly an attack upon bigness in business was subjected by opponents to an intelligent attack which was never answered satisfactorily by the proponents of the legislation. The old tax on corporations was a flat assessment of 13-3/4 per cent on net income, but the new tax, claimed to reduce income taxes in 90 per cent of American corporations calls for a 12-1/2 per cent levy on incomes under $2000; on incomes over $2000 and under $15000, 13 per cent on the excess over $2000; on incomes over $15000 and under $40,000, 14 per cent on excess over $15000; on incomes over $40,000, 15 per cent on the excess over $40,000. Let us assume a hypothetical corporation had a net income of $10000. On the first $2000, it will pay $250; on the remaining $8,000 it will pay $1,040, or a total tax of $1,290. Later we shall furnish more complete analysis of the Tax Bill, and the Institute will be glad to furnish any particular information which member producers may desire to secure.

The Federal Government ultimately must face squarely the question of budget deficits since the new Tax Bill avoids rather than solves the problem. There will be the necessity either in 1936 or in 1937, if inflation is to be avoided, of either tapping new sources of income or retrenchment in expenditure. In this connection it is interesting to know that on March 1, 1933, the Federal payroll totaled 560,000 men and women. On August 1, 1935, the number of employees advanced to 730,000, and this condition was aggravated in the last Congress by the wiping out of economies effected in 1933. The first session of the 74th Congress created a number of new agencies, all of which will have official and staff personnel. The Guffey Bill creates a National Bituminous Coal Commission; the Wagner Labor Disputes Act calls the National Labor Relations Board into existence; the Motor Carriers Act organizes a new department of the Interstate Commerce Commission; the Social Security Bill creates another Commission. Press dispatches indicate that there will be retrenchments in the personnel of other emergency agencies, but this may be offset by the necessity of appointing sufficient employees to carry on the work of new organizations. These are things with which industry must be familiar.

Special Industry Regulation

Despite the claim persistently advanced that it would be held to be unconstitutional by the Supreme Court because of improper use of the taxing power and an attempt on the part of the Federal Government to assume jurisdiction denied by the Commerce Clause, the Guffey Bill, setting up a new Federal Commission to administer a code of fair practice for the bituminous coal industry, was passed by the Congress and signed by the President. A tax of 15 per cent on the minehead value of coal is levied, with a refund of 90 per cent to operators subscribing to the code. It provides for wage and hour agreements to be negotiated through collective bargaining in each district, such agreements to be binding on all producers when negotiation is completed between producers of more than 2/3 of the annual tonnage and the representatives of more than half of the mine workers. Minimum prices will be fixed in each district, based upon the average weighted cost. The bill is of more than ordinary importance, because, if held to be constitutional and if it develops to be administratively practical, it may be used as a pattern for the regulation of other basic and natural resource industries.

The Wagner-Connery Bill establishes the National Labor Relations Board, for the principal purpose of enforcement of Section 7 (a) of the old Recovery Act. This bill was subjected to analysis in our last report, and while its effect may not be felt at once in our industries, it is more than academically important to us. Collective bargaining is not a new principle of legislation; it was incorporated in bills covering particular industries during the Coolidge and Hoover Administrations, but in the present bill it is applied to industry in general. All should know that the term "collective bargaining" means no more than that under the law. Employers are required only to meet with their employees, or duly accredited representatives of their employees, for the purpose of discussing labor conditions. It is not required that demands shall be met or even that an agreement shall be reached.

Congressman Connery appeared on the scene once more with a 30-hour bill. Its effect would be not only to compel a 30-hour week in all but a few selected industries, but it would also authorize a bureau in the Department of Labor to fix wages " to insure a decent standard of living in each industry. " This bill will undoubtedly be reintroduced at the next session, and while it may never pass as such, its influence is bound to be felt.

Notice has already been served of intention to introduce a bill to regulate the textile industry. Senator O'Mahoney of Wyoming introduced a bill in the last session to regulate corporations, the authorship of which is credited to the American Federation of Labor. It would require Federal licensing of corporations engaged in interstate commerce, and the Federal Trade Commission would be empowered "to develop a general program for the coordination, stabilization, and orderly development of the basic industries." Corporation directors would be made trustees for stockholders and punitive damages would be provided for "unconscionable profits which such directors may secure by means of their power to control the capital of the stockholders." A group of Federal "corporation representatives" would advise and represent minority stockholders. Surpluses would be limited and when dividends exceeded 10 per cent of the par value of the stock of a corporation, the amount over 10 per cent would be divided among employees on a profit-sharing plan. Equal voting power would be given to all stock. The distinguished Senator from Wyoming said on the floor of the Senate, when introducing his bill, that his proposal would insure "self-regulation of industry." His reasoning from cause to effect seems rather obscure.

Work Relief Regulations

There was universal dissatisfaction with the administration of the $4,800,000,000 fund provided by the Emergency Relief Appropriation Act of 1935. Limitations attached to expenditure of the funds for construction purposes were such that a rational and orderly highway and grade crossing program became impossible, notwithstanding the statements in the President's message to Congress that the money would be used in the carrying out of projects which would add to the national wealth and furnish permanent improvements. There was an intolerable delay in the publication of regulations, and the result has been that State Highway Departments have been unable to submit programs for approval in time for prosecution this year. The result is that in most states the $400,000,000 earmarked for highways and grade crossing work will not express itself this year, although considerable activity is anticipated in 1936.

Recently there have been important modifications in regulations which give assurance of a normal program:

1. It is no longer required that 90 per cent of the labor come from the relief rolls. It is required only that labor be certified by the U. S. Employment Service, preference being given to those on relief. The labor must be competent to perform the work.

2. The alternate plan for utilization of Works Program highway funds originally contemplated that a state would underwrite the entire amount of its apportionment. It became evident that a number of states are financially unable to do this, and consequently the adoption of the alternate plan for a portion of the program will now be accepted where states are unable to underwrite the entire appertionment.

3. The grade-crossing regulation limiting cost of projects to $1,400 per man per year, or, as an alternate, requiring 40 per cent of the cost to be represented by direct labor, is eliminated entirely. The amendment permits the grade-crossing work to go ahead without limitation respecting direct employment, except that labor must be certified by the U. S. Employment Service.

Those who are more pessimistically inclined feel that the Federal Government will have to provide relief funds for many years to come. No scheme of relief has proven to be wholly satisfactory, and it is now generally recognized that all resorts are inferior to a revival of business which will create employment in private industry. The least expensive plan of relief is the direct dole, but it has the disadvantage of being detrimental to public morale and it fails to distinguish between voluntary and involuntary idleness. The most desirable plan is that voiced by the President in his message to Congress - a large-scale public works program - but it is now said in official quarters that substantially more than $5,000,000,000 would have to be spent to provide employment for all now receiving direct or indirect relief. Present policies represent a compromise and, like all compromises, it is not universally appealing.

Many who were active in campaigning for Federal highway and grade-crossing grants are now disillusioned. It is entirely possible that the Act of 1935 represents the last bill carrying outright grants for highways and grade crossings, with the Federal Government returning to the regular enactment of the Federal-aid Bill such as we know in other years. This decision, temporarily at least, would have a paralyzing effect on our industries in many states, but offsetting this is the undeniable circumstance that a number of states, counting on Federal grants, have diverted the proceeds of gasoline taxes to totally unrelated purposes. It is believed that this policy of diversion will be persisted in until Federal grants cease. The whole subject is one of intense interest to our industry, and its development will be followed by the Institute.

Code Bids Validated

Senate Joint Resolution 163 has been signed by the President. Its effect is to validate bids invited prior to the decision of the Supreme Court in the Schechter Case, when such bids required compliance with applicable codes. After the decision of the Court, Comptroller McCarl ruled that these bids were illegal, because they ignored the basic law that the contract should be awarded to the lowest responsible bidder. The joint resolution overcomes this ruling and permits departments of the Federal Government to award contracts to the lowest responsible bidder indicating an intention to comply with applicable codes.

It is noteworthy that governmental agencies are still requiring the insertion of the following clause in contracts for the purchase of materials to be used on Federal projects: "This agreement is entered into on the basis that if subsequent legislation shall require observance of minimum wages and/or maximum hours of employment and/or limitation as to age of employees in the production of materials or other supplies purchased by the contractor and entering into the work, the contract shall be subject to modification in accordance with such statutory requirements as to the extent authorized or required by law."

As originally drafted this clause anticipated the passage of the Walsh Bill, referred to previously; but this bill did not pass, and there seems to be no legal warrant whatever for the insertion of such a clause in any contract. The Comptroller-General has ruled it to be an improper use of executive power, and it merits the further objection that it prevents intelligent and fair contractual relationships. Yet our producers are faced with the fact that they expose themselves to rejection of their bids if they refuse to sign

the agreement. Final decision must be left to the individual, but the Institute in the meantime is preparing to raise the question with the Federal Government as to the reasons which underlie their insistence upon the inclusion of the clause in all material contracts.

APPENDIX I - TEXT OF H. R. 8519

An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) before any contract, exceeding $2,000 in amount, for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than $1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $1,000,000 and not more than $5,000,000, the said payment bond shall be in a sum of 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $5,000,000 the said payment bond shall be in the sum of $2,500,000.

(b) The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

(c) Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

Section 2. (a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under this Act and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him; Provided, however,

That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which said person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshall of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the date of final settlement of such contract. The United States shall not be liable for the payment of any costs or expenses of any such suit.

Section 3. The Comptroller General is authorized and directed to furnish to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original, and, in case final settlement of such contract has been made, a certified statement of the date of such settlement, which shall be conclusive as to such date upon the parties. Applicants shall pay for such certified copies and certified statements such fees as the Comptroller General fixes to cover the cost of preparation thereof.

Section 4. The term "person" and the masculine pronoun as used throughout this Act shall include all persons whether individuals, associations, copartnerships, or corporations.

Section 5. This Act shall take effect upon the expiration of sixty days after the date of its enactment, but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract. The Act entitled "An Act for the protection of persons furnishing materials and labor for the construction of public works," approved August 13, 1894, as amended (U.S.C., title 40, sec. 270), is repealed, except that such Act shall remain in force with respect to contracts for which invitations for bids have been issued on or before the date this Act takes effect, and to persons or bonds in respect of such contracts.

Approved, August 24, 1935.

RULES AND REGULATIONS ADOPTED BY THE MINERAL AGGREGATES INSTITUTE

We have just been advised by the Mineral Aggregates Institute, that at its last meeting in Washington on August 20 the Board of Governors adopted Rules and Regulations to govern the operation of the Institute. Under Article X thereof, the Rules and Regulations were submitted to the three member Associations for approval, such approval being necessary for final ratification. The Institute has announced that approval of the Rules and Regulations has been received from each of the member Associations and their full text is submitted below.

Rules and Regulations

Article I

The name of this organization shall be the Mineral Aggregates Institute, hereinafter referred to as the Institute.

Article II

The membership of the Institute shall be composed of the National Crushed Stone Association, the National Sand and Gravel Association, and the National Slag Association.

Article III

The object of the Institute shall be to act for the National Crushed Stone Association, the National Sand and Gravel Association, and the National Slag Association, on those matters in which, in the judgment of the Board of Governors, there is a community of interest warranting joint action. Those matters which can appropriately be acted upon by the Institute shall be determined by unanimous vote of the Board of Governors.

Article IV

The Institute shall function through a Board of Governors. Each member Association shall be entitled to two (2) representatives thereon. Vacancies occurring on the Board of Governors shall be filled by the appropriate Association in such manner as it may determine. Members of the Board of Governors shall serve without compensation from the Institute.

Article V

Officers of the Institute shall consist of a Chairman, an Executive Secretary, and a Treasurer, who shall serve without compensation from the Institute. They shall be elected by the Board of Governors, and, beginning February 1, 1936, shall serve for one (1)year or until their successors are elected. The Chairman shall be chosen by the Board of Governors from its own membership; the Executive Secretary and the Treasurer shall be elected by the Board of Governors from the paid staffs of the member Associations.

Article VI

Meetings of the Board of Governors may be called at any time by the Chairman, and shall be called by the Chairman upon the written request of two

(2) members of the Board of Governors, but, in either case, upon due notice as hereinafter provided.

Article VII

A majority of the members of the Board of Governors shall constitute a quorum for the transaction of business. No determination of the Board shall be made without the affirmative personal vote of a majority thereof, provided, however, that the said majority shall contain at least one (1) vote from the representatives on the Board of each of the member Associations. However, if a quorum be present at any meeting and a majority of such quorum shall take affirmative action, such action shall be effective only when there shall be received in writing within fourteen (14) days, in the office of the Executive Secretary, assents thereto which added to the votes of the members present in person shall constitute a majority of the Board of Governors.

Such matters as may appropriately be acted upon by the Board of Governors by mail ballot, shall be presented by the Chairman in such manner as to permit an affirmative or negative vote, and the ballot thereon shall be transmitted by registered mail to each member of the Board of Governors. Each member of the Board shall return his ballot by registered mail to the office of the Executive Secretary for receipt within ten (10) days from the time such ballot was mailed. A ballot not received within ten (10) days shall not be counted. The officers shall meet and canvass the vote, counting all ballots received within the ten (10) day period, and such votes shall have the full force and effect of a vote cast at a duly called and held meeting of the Board of Governors.

"Due notice" as used herein means notice by telegraph dispatched at least three (3) or by mail dispatched at least five (5) business days prior to the meeting. Actual attendance at such meetings, or a waiver of notice executed in writing or sent by telegraph either before or after such meeting, shall be deemed equivalent to "due notice."

Article VIII

The Chairman shall preside at all meetings of the Board of Governors, and shall be an ex officio member of all committees and subcommittees. He shall perform such other duties as may be delegated to him by the Board of Governors. In the absence of the Chairman at any meeting of the Board of Governors, the members there present shall elect a presiding officer.

The Executive Secretary shall be in charge of the administrative offices of the Institute. He shall assist the Chairman in carrying out the policies of the Board of Governors, and shall perform such other duties as may be delegated to him by the Board of Governors.

The Treasurer shall keep full and correct accounts of the receipts and disbursements of the Institute, and shall deposit all moneys and valuable effects in the name and to the credit of the Institute in such depositories as may be designated by the Board of Governors, and shall render to the Board, as it shall require, an accounting of the finances of the Institute. The Treasurer shall perform such other duties as may be delegated to him by the Board of Governors.

(1) members of the Board of Governors, but in either case, upon due notice to members previously.

Article VII

A majority of the members of the Board of Governors shall constitute a quorum for the transaction of business. No determination of the Board shall be made without the affirmative personal vote of a majority thereof, provided, however, that the said majority shall contain at least one (1) vote from the representatives on the Board of each of the member associations. However, if a quorum be present at any meeting and a majority of such quorum shall take affirmative action, such action shall be effective only when there shall be received in writing within fourteen (14) days, in the office of the Executive Secretary, absentee ballots from the votes of the members present in person shall constitute a majority of the Board of Governors.

Such ballots as may appropriately be voted upon by the Board of Governors by mail ballot, shall be presented by the Chairman in such manner as to permit unanimity of positive vote, and the ballot thereon shall be transmitted by registered mail to each member of the Board of Governors. Each member of the Board shall return his ballot by registered mail to the office of the Executive Secretary for receipt within ten (10) days from the time such ballots were mailed. A ballot not received within ten (10) days shall not be counted. The officers shall each cast one vote, counting all ballots cast by members present within ten (10) day period. The mail vote shall have the force and effect of a vote cast at a duly called and held meeting of the Board of Governors.

"The Code" as used herein means duties by Calendar days computed as set forth in Rule (5) or by mail dispatched at least five (5) business days prior to the meeting. Notice elsewhere as such meeting, or a waiver of notice executed in writing or sent by telegraph either before or after such meeting, shall be deemed equivalent to "due notice."

Article VIII

The Chairman shall preside at all meetings of the Board of Governors, and shall have an official number of all committees and assessments. He shall perform such other duties as may be delegated to him by the Board of Governors. In the absence of the Chairman at any meeting of the Board of Governors, the Secretary-Treasurer shall elect a presiding officer.

The Executive Secretary shall be in charge of the administrative offices of the Institute. He shall assist the Chairman in carrying out the policies of the Board of Governors, and shall perform such other duties as may be delegated to him by the Board of Governors.

The Treasurer shall have full and certain accounts of the receipts and disbursements of the Institute, and shall deposit all money and valuable effects in the name and to the credit of the Institute in such depositories as may be designated by the Board of Governors, and shall render to the Board, whenever it shall require, an account of the financial condition of the Institute. The Treasurer shall perform such other duties as may be delegated to him by the Board of Governors.

Article IX

The Board of Governors shall adopt a budget covering the activities of the Institute, which shall be submitted to the member Associations for their approval. Such budget shall not become effective unless and until approved by each member Association.

Each member Association shall pay $500 annually to the Institute as membership dues. Expense of the Institute in excess of $1,500 annually shall be borne by member Associations in proportion to the total annual production of the members of each of the member Associations.

Upon unanimous vote of the Board of Governors, the Institute may draw upon the staffs of the member Associations for such executive and clerical assistance as may be necessary to carry on the work of the Institute. The facilities and instrumentalities of the Institute shall be available to individual member companies of the member Associations.

Article X

The headquarters of the Institute shall be located at Washington, D. C. Upon unanimous vote of the Board of Governors, the Institute may also use the offices of the National Crushed Stone Association, the National Sand and Gravel Association, and the National Slag Association, in the conduct of its activities.

These Rules and Regulations shall become effective when approved by the member Associations. Amendments may be adopted by five (5) affirmative votes of the Board of Governors, and shall become effective unless disapproved by the member Associations within thirty (30) days from the date of the submission of the proposed amendment or amendments to the Presidents of the member Associations.

Article XI

Roberts' Rules of Order, Revised, shall be the standard of authority for the conduct of all meetings of the Board of Governors.

NINETEENTH ANNUAL CONVENTION

NATIONAL CRUSHED STONE ASSOCIATION

HOTEL JEFFERSON - ST. LOUIS, MO.

JANUARY 27, 28, 29, 30, 1936

Make your plans now to attend this annual foregathering of the crushed stone industry